

DONALD H. LITTLE

IBLA 78-408

Decided September 6, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting unpatented mining locations, W-MC 2276 etc.

Affirmed, as modified.

1. Notice: Generally--Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

2. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, the owner of an unpatented mining claim must file a notice of intention to hold his claim prior to Dec. 31 of the calendar year following the date of location of such claim, or the claim shall be deemed conclusively to have been abandoned.

APPEARANCES: Donald H. Little, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Donald H. Little appeals from a decision of the Wyoming State Office, Bureau of Land Management, dated May 8, 1978, which rejected his unpatented mining claims, PS # 1-154, PS # 156-263, and PS # 279-456, identified by serial numbers W-MC 2276-2715, inclusive, for the reason that evidence of assessment work/notice of intention to hold claim had not been filed as required by 43 CFR 3833.2-1(b)(1).

Appellant contends that inasmuch as the PS claims were located during December 1976, no assessment work is required for the 1976-77 mining year, 1/ and that he was unaware that a notice of intention to hold was required when assessment work was not.

The Federal Land Policy and Management Act (FLPMA) of October 21, 1976, 90 Stat. 2743, 2769, 43 U.S.C. § 1744 (1976), provides pertinently:

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Sec. 314 (a) * * * The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; * *

The Department's regulation implementing the cited portions of FLPMA are found in 43 CFR 3833.2-1(b)(1), which reads as follows:

1/ The assessment year commences at 12 o'clock meridian on September 1 succeeding the date of location. 30 U.S.C. § 28 (1976).

The owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the preceeding assessment year or a notice of intention to hold the mining claim.

Thus, even though there was no requirement to file evidence of assessment work prior to December 31, 1977, filing a notice of intention to hold the PS claims was necessary to prevent abandonment. Neither FLPMA nor the regulations implementing that Act contain any provision allowing any waiver of the filing requirement, or for granting any extension of time to effect such filing. To the contrary, 43 CFR 3833.4(a) states that failure to file such instruments as are required by section 3833.2, within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void.

[1] In response to appellant's claim that he was unaware of the filing requirement, the regulations above cited are very clear on this requirement. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. § 1507, 1510 (1970); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). The regulations herein cited were promulgated in the Federal Register at 42 FR 5300 et seq. (January 27, 1977).

[2] Under section 314(a) of FLPMA, the owner of an unpatented mining claim must file a notice of intention to hold his claim before December 31 of the calendar year following the date of location of such claim, or the claim is void because of abandonment. So, in the cases before us, as no notice of intention to hold was filed for any of the PS claims, each of them is determined to be void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

